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[For information on habous endowments of land and other property to religious institutions for the glorification of Allah, see Categories 794 and 423.]

The woman
593 /37 cont./ naturally enters among those having
[586] rights. Her part is absorbed with that of the spouse in a community which is dissolved only in case of divorce. But, as one sees, the scope of this community is reduced to the conjugal couple. And then it is amenable to precise calculations in case of dissolution.

592 178 Thus, even when the traditionalism of the ensemble or the prestige of one of the members establishes, at the echelon of the whole tigemmi, the unity of the mode of existence, manifested by the common allowance, the economic personality of the couple exists. It has not been one of the least surprises of the investigators for the census of 1952 in this region to verify that the word "foyer," /38/ takat, ar /Arabic/: kânûn, used in the formulary, was understood only as corresponding to the conjugal family in the strict sense: which means that its average number was generally only three, sometimes four, but very rarely five persons, as had been believed up to then. This economic character has evidently been reinforced by recent evolutions: that of the alimentary regime, for example, or that of the possibilities for workers' emigration.

Thus accordingly, and although it fails to note that the montagnards do not attribute the present cutting up of the foyers to any decline, to any change of the mores, this observation
[184] [586] calls for some correctives. The domain of the a. H'adduyws, even though it is characterized by a rarer practice of divorce -- half less than among the Idma, for example -- seems to have remained more faithful to an old tradition of familial aggregates.

• 425 178 593 There is another point at which a recent evolution has influenced behavior. We shall have to speak in detail of an important patrimonial practice, which the new notarial regime seems to have made rarer. It is a matter of the disposition by the father of all or part of his immovables for the benefit of such and such of his heirs, in general males. The institution, somewhat imprecise today, is called, according to the case, waçiyya, ççadaqa, or even ih'obus. It would be a very interesting study to determine what might be the frequency of these anticipated successoral distributions, if I may venture to say it, by which the

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425 father, of his own accord, puts himself on equal terms with his
178 sons with regard to the ownership of the ancestal fields. This re-
593 search in the archives has not been undertaken. But if the present state of affairs cannot contribute sufficient detail on that, because the institution is very much obliterated, the acts of this kind were numerous in the past and seem to reveal a very strong tendency of the mores.

Such equalization between father and son runs counter to everything that one could imagine about a patriarchal culture.
584 But it is to this impression that the great individual initiative that such a society leaves to the young people in the choice of spouse would already lead. Betrothals are free. They are perhaps some-
[178] times made in an atmosphere -- grown very pale today however -- of age groups and communal festivity. They never originate with the parents. The latter are in general requested by the young man or the girl to lend to the agreement their intervention, necessary for a juridical consecration and an integral part of the ceremonial context.

592 If the unconstraint of the adolescent with regard to his
613 father is such, if the autonomy of the couple stands out so vividly in the aggregate of the tigemmi, what will the relations of these conjugal families be with /39/ the larger agnatic ensemble of the ikhs, defined by a nickname or an ancestor's name? The impression is that these relations are conceived -- today in any case -- only from the angle of public law. No law, no morality, and not even good form compels the autonomous citizen, the rrami,
[561] to take the advice of his collaterals. On this point this society is even strangely disrespectful of /Fig. 4 appears here/ /40/ old
[426] age, veneration of which we would attribute to it. For the collateral, in nature, is often the usurper or the creditor, intent upon regrouping the gentilitial patrimony "on his head."

551 Now the individual hardly has a name, if one may say this. The anthroponyms are incontestably poorer here, less varied, than in Arab country. More monotonous, and also more fleeting to hear. Generally, they consist only of brief syllables, the assemblage of which is rarely original. There is no village so modest

[TEXT CONTINUED ON PAGE 57]

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312 423 178 structure of the milieu, and to a certain scansion of the times, is of keen documentary interest. It perhaps reveals a former stage of this montagnard culture and permits discovering, beneath the individual variety that female inheritances and mutations have amassed, triumphing over many obstacles, the authentic rudiments. Secondly, it acts in itself as a conservative brake. The water is by no means "attached to the land," as our books claim. But the land and the water, correlatively, are attached to the group. One who sells or lets alienates a part of the collective personality, which is serious. In addition, the evasion of the right for water out of the turn of the ikhs, the intrusion of a third party in the roll of "sons of the uncle" cause a perturbation that the collective organism will try to eliminate. In fact, these mechanisms imply delicate connections between all the elements of an agrarian order. If one of them happens to be missing? It is a cause of conflict and failure in these operations of great style that the maintenance of the ditches, the repair of the sluices, the pulsation of the precious fluid according to an impeccable /158/ time switch constitute. Any lag between the gentilitial appurtenance and the tenure of the soil thus arouses reactions that tend toward the eviction, peaceful or not, of the foreign body. Firm or resolutory sales, inheritance by the women meet the opposition of new conservative mechanisms. In this sense one can say that the system of water distribution is a veritable legitimacy machine.

When the forces of mutation sweep it away, whether by their own action or by the decadence of the community or simply its technical resignation before too much complexity, the old mold shatters. The turns for water will henceforth be based on something else: the estimation of experts or topographical continuity. At the end of this evolution, the portion of water, attached to a certain landed property, would flit from hand to hand according to [425] the uncertainties of individual transactions. Even worse, completely detached, it would itself form the object of sales and loans, of pledges or speculation: these last two stages do not appear among the Seksawa any more than in the neighboring groups. For 312 423 171 stronger reasons one does not observe there the supreme stage that

423 /354 cont./
181 existence is only picturesque chance or corresponds to something historic.

423 Two adages, reproduced by the Chleuh /Shluh/ jurists, illus-
829 trate the two faces of the problem (1).

1. J. Berque, "Les Ajwiba d'al-ᶜAbbâsî /The Ajwiba of al-ᶜAbbâsî/," R. al., 1950, note to §10.

"The field," says as-Suktânî, "is, in the Sous, more essential than the house elsewhere." "Our fields," says an author from the Ammeln, "are our money. Therefore we use them as someone else would use money." How the permanent landowner-foundation of this society can arrive at a completely fiduciary mobility, this is what we are going to try to understand.

423 The space, I mean the irrigated and valorized space in which this life moves, is madly exiguous. Figures have been given that would illustrate to the eyes of the economist the fundamental futility of it: something like a humanity upon flower pots! But
423 this very unsufficiency seems to have at all times contributed,
166 along with other factors, to the practice of emigration. Depar-
169 tures, seasonal or for a longer term, descents, coastal or deep-sea,
174 if I may venture to say it, to the plain, desertion before famine or sickness, evacuation before the enemy, movements provoked by distress or aggressiveness: quite an intense vibration of groups and individuals is to be divined in the past. Whence these still /355/ identifiable deposits left by layers of vanished populations: a. H'ogg^{w}a, a. Ish'aq, a. Gasa in the Moyen /Middle/ and the Haut /Upper/ Seksawa. Indications of a violent past, certainly. But
423 violence in itself alone does not explain everything. Landed-
425 property legitimacy is irreducible here. The best proof of this is that in the case of military conquest the conqueror himself judges his right insufficient as long as he has not succeeded, by long and difficult negotiations, in consolidating his land expropriation by regular purchase. Here are three examples of this.

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423 /The following three paragraphs are in small type in the orig-
175 inal source./ Some a. Gasa titles were shown in 1948 on the oc-
691 casion of a dispute bearing on lands situated between Z'init' and Jjgit. They came in support of a claim which did not hesitate to attack an occupation of at least a century and a half.

An act of 1234 Heg.: 1819 records an agreement among the a. H'adduyws on the subject of some property of the a. H'ogg^{w}a. The jemâa proclaimed the unopposability of the habous to which the a. H'ogg^{w}a were pleading an exception in order to break up the landed-property alienations and leasings, even those consented to on the part of women, to which a conqueror referred.
691 Such a deliberation, which implies the existence of numerous and
423 argued litigations, attests to the fact that the a. H'ogg^{w}a, al-
425 though pursued by war and in fact dispossessed, are always regarded as the origin of all landed-property rights, and that it is necessary to go back to them by regular purchases in order to justify a possession. The fact of eliminating the difficulty originating from habous in no way limits this preoccupation with origins; on the contrary, it confirms it, since it is only by purchases that the habous can be opposed. One thus sought to purchase.

175 A third example is offered by a document of 1310 Heg.:
691 1894. A few years earlier the same a. H'adduyws had won the
423 ground of Tasselli from the Idma. By ransom or counterattack
425 the Idma recovered it. But certain ikhs-s were false, being on the side of the adversary. Their goods were then divided into portions awarded to the members of the coalition. This trait would seem to be in opposition to preceding ones. It is so only in appearance. The owner's legitimacy, if it resists eviction, may disappear because of certain errors solemnly attested to. A marabout of Assttif presided over the exclusion of the traitors. This is a sort of ostracism. Neither spoliation nor even civil sanction. The group, by an intense manifestation of its internal tension, re-established in their purity the bonds that attach it to its soil.

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175 423 691 This new element will have made the analysis progress. It results from written testimony, and by no means from hypotheses more or less subject to caution. It reveals, in the comings and goings of the man, due to the difficulties of the times, a constancy that attaches it to a ground, and is not without aspects of a magico-religious order. This bond can survive the most violent vicissitudes. On the condition, undoubtedly, that the name survives. [103] The primacy and the extreme conservation /356/ of toponyms in this part of the Atlas are perhaps the reason that this persistent legitimacy can be observed here to a degree unequaled, it seems, in the rest of North Africa.

The last of these acts also supplies an important element. It is seen here that the equilibrium between the group and the ground may undergo modifications because of the intervention of the group. [613] Consequently who knows if the patrimonial representation of the ikhs-s in the quarters does not reflect deliberate initiatives and, in short, measures of application of the first law?

425 However that may be, permanence and agitations of the landed life are fashioned according to figures that it will not be from an overly systematic logic to call tied between them. Now [436] the instrument of the exchanges here is money: that which is amassed on the spot and that which is fetched from the outside. This is the double aspect of a monetarism that forms the unity among the so-called contradictory, and at the very least contrasting, aspects of the milieu. How these different economic or moral factors are ordered is what we are now going to try to elucidate.

Patrimonial Legitimacy Versus Possession

428 And first of all the notion of patrimony exists in this society. The law, like the mores, expressly refers to it. This is the ddment [192] (1).

1. From the Arabic ad-dimna, plur. diman, "place smoked by the proximity of the

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/footnote 1 continued/ habitations." This semantic derivation was perhaps inspired by the analogy of Berb. tamazirt, "cropland," a general term in a whole portion of this linguistic domain, along with amazir, "manure." Hanoteau and Letourneux seem to make a rapprochement between these two terms, La Kabylie et les coutumes kabyles /Kabylia and Kabyle customs/, 1873, t. I, p. 414.

corresponding to a notarial word, ad-dimna, semantically strange. In the settlements of acquests, a praecipuum of a half is always subtracted as representing the portion of what we would call the "family property," if this latter term did not much more precisely express the Seksawa habous. A fatwa /fuwa/ of 1220 Heg.: 1805 (Tamt'ddit) illustrates the antiquity of the practice. "The ᶜorf," it states, "sets aside half the goods for the dimna, by analogy with the commandite where a part of the initial capital is reserved. The remainder is acquests and accrues to its sharers." This conservatism nevertheless lets fuse here and there forces of evasion, wishes for rupture. Such more or less aberrant circumstances have sometimes permitted personalities, either introduced or local, to seek to break this sort of immanence of the ikhs-s in their soil.

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/357/ /The following two paragraphs are in small type in the original source./ Thus in 1147 Heg.: 1733 a "caid" from the piedmont, Lah'sen Twagga, implanting himself in the lower valley, affirmed: "All this land has never had a master — to one's knowledge — either in our time or under paganism or under Islam. It has not been reputed associated with anyone until the present Caid, the first, vivified it. And he vivified it in full by his means and those of his men. He put it in a state of "repletion" (ᶜimâra, in contrast to "desertic emptiness" or to "vacancy," khuluw). He remained there. He made a frequented bourg out of it. He dug a ditch there, not without setting apart a portion

/357 cont./

175 423 425 of it for the saints of the Seksawa, such as Lalla Aziza and the H'ançaliyin, in conformity with ancestral usage. He planted it with trees and sowed it with cereals, and surrounded it with an enclosure," etc.

Much farther upstream, at Rekto Wasif, in 1011 Heg.: 1603, a cultivator required evidence that he had exercised usufruct over a piece of land "from the time of the sherif." The witness attests "to have participated in a twiza of fertilizer and other practices of tillage and harvest with the Ait Wasif."

423 671 171 But possession will never hold against the right of origin, the basic legitimacy, açl. The fact is important enough to be the object of deliberations and even of codifications. In effect it runs directly counter to Mussulman law. This conflict between the master and the disciple is striking. Indeed, despite the moral exigencies that bring it closer to our canonical law in its criticism of the vices of usurpation, violence, and even of precariousness, the Mussulman law causes to intervene the notion of a duration whose prolongation entails juridically the purge of these vices and constitutes in the long run the title of ownership. Moreover, its litigious and technical nature, making it confuse the right and its proof in most of the cases, leads it to confer upon the possessor the advantageous qualification of defendant, which very often will end the proceedings in his favor with a simple swearing of an oath. Nothing more remote from the Seksawa custom, where the burden of proof devolves on the possessor, and which is ignorant of any legitimating effect of duration.

423 671 (613) Applied to the letter, the preponderance conferred on the written title, by a technique so imperfect and offering so little in guarantees of authenticity, over ancient possession apparently leads to the worst of hazards. In fact, the "legitimation" of which the documents speak is the notoriety of the group attaching such revendication to the well-known patrimony of the ikhs. This genealogical consciousness of the group, tied to the structure of the ground, is what must be referred to in order to give an account of the customary rule of action that has become incomprehensible beneath its cloak of written law. Deliberations of this sort,

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175 423 671 It is for this reason that the tribe has agreed upon this point, thus cutting short contestations opposed to past or future revendication.

This hostility to a right drawn from possession, that is, let us take care, to ownership, whenever it does not agree with the gentilitial distribution of the ground, is not new. A judgment of 991 Heg.: 1583 (a. D'alh'a) is based on the consideration that "these claims given out on faith from possession are vain and can be heard no more than the void." At this time, the generalization of the notarial writing being quite recent, it is not very probable that the aṣl was necessarily an act. One is thus led to suppose for this period means of proof other than the production of writing. Recourse to a sacramental procedure, to sworn law or to such a manifestation by the group? It is probable that the notarial [177] method was literally snatched up by the needs of the Chleuh /Shluh/ society, which, in this matter as in others, surpassed and overwhelmed, according to its own ends, the prototype from the fiqh.

/359/ Former Form Poorly Normalized: the "rrahn"

425 This procedural rule found its keenest necessity in the existence of an institution that combines stability and mobilization of the patrimony. I mean the rrahn (1).

1. On the Berbère /Berber/ rrahn, cf., besides our afore-mentioned article on al-Abbâsî, notes at §§12 and 14, with quotations from al-Bakrî, from the Istiqṣâ', and from the Manâqib al-H'ud'aykî on the history of this form in the Sous and the Atlas, see as-Suktânî, Ajwiba, ms. from the zaouia of the Ud^{c}Abdalmawlâ, pp. 80 b sq. Among the European authors, cf. especially, besides the fine study on the Kabyle rahn by H.-L., Kabylie... /Kabylia.../, t. II, pp. 534 sq.; G.

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/footnote 1 continued/ Surdon, Esquisses de droit coutumier berbère marocain /Sketches of Moroccan Berber customary law/, 1928, pp. 196 sq.; Marcy, R. al., 1932, "L'engagement immobilier (rrehen). Contribution à l'étude du droit coutumier zemmour /The landed-property engagement (rrehen). Contribution to the study of the Zemmour customary law/," pp. 78 sq.; R. Aspinion, Contribution à l'étude du droit coutumier berbère marocain (Zayân) /Contribution to the study of the Moroccan Berber customary law (Zayân)/, 1937, pp. 185 sq.; Blanc, "Effets du contrat de rehen dans les tribus berbères du Haut Gedmiwa /Effects of the rehen contract in the Berber tribes of the Upper Gedmiwa/," R. J. C., 1952, No. 7, pp. 7 sq., which describes the forms closest to those of our sector.

The equivalent in Arabic that is given in the texts for this term is the one of "sale with power of redemption," thunyâ, known from the fiqh. The jurists of the Sous, such as al-ᶜAbbâsî, have devoted long developments to it. In fact, it is a customary type so frequent, under diverse names, that the claimant is allowed, long after the fact, to put in a plea to demand the resolution /annulment/ of a sale: he then explains the length of his silence by a "presumption of thunyâ."

This sale is general in the Sous: ghâlib fî buldati-nâ. It bears several names there: iqâla or rahn. At-Tamanârtî writes: "No difference between this assumed rahn so widespread in the country and the thunyâ sale." And at-Tamulî: "My rule in matters of purchases of land made in our country under the name of rahn is to leave the fruits to the purchaser, for what the parties have sought is clearly a thunyâ sale."

This resolutory faculty (properly called iqâla) is in principle a clause vitiating the sale. Nevertheless the tendency of the jurists is

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425 to tolerate the latter as a fait accompli. They even use the argument of this vicious clause to rescind the sale in exchange for reimbursement. And that even after lapses possibly exceeding a century, and during which the possession effected no prescription. Rescission and application a posteriori in this case come back to practically the same thing. They are of interest to us only through the judicial preoccupation that they express to offer a local form absolutely irreducible to orthodoxy.

But here are further significant aspects. With the assimilation with the classic thunyâ are already distinguished some elements of of a singular archaism. Thus in the modes of "resiliation." It takes effect reckoning from the payment of a portion of the sum, tamuzunt, /360/ tauqit, that is, of an "obole." In a. Abdella, the deposit is made on the pile of fruit. Everything happens as if the lessor thus re-establishes communication that was interrupted by the collecting of the price. Such seems to be the substrate of what was later interpreted as security, sale with power of redemption or with resolutory condition. Even at present a devaluation of a hundredfold to one has not taken from the Seksawa any of the gravity with which they effect the liberation of the field, its ransom, tefdiyya, ifda, iftida, in exchange for sums of a ridiculously small amount. For there is in all that indeed something other than the quantitative.

425 175 Truly an ancient form: al-Bakrî points out the existence of it in this part of the Atlas in the eleventh century. He undoubtedly connects it with some montagnard heresy: râfidî-s or worshipers of the ram. During periods of religious zeal the reaction of the learned became vehement. Thus, in 970 Heg.: 1563, the official interdiction of this contract was proclaimed at Taroudant. This was a period of fervor and strong political power. At about this period the mystic Ah'med u. Musa died. The Sâadian Mawlây ᶜAbd Allah al-Ghâlib bi'llah begged for his approbation and had conferred on himself the quality of ᶜadl by the doctors of the South. This was also the time when the Arab notarial practice became generalized in the Atlas. However that may be, the interdiction did not hold against the customary unanimity that it

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425 tried to break, and whose riposte, significantly, assumed a pious
175 and juridical coloring. The jamāᶜa cadi of Taroudant, Saᶜīd ibn ᶜAlī al-Hawzālī, consulted the saint Muh'ammad at-Tamanārtī, who, by classic reasoning of Malékite /Maliki/ pragmatism, concluded in favor of tolerance: "And that is why this practice is thus perpetuated throughout the country of the Sous up to our day."

425 If the saints come to the rescue of the lender at interest, it is because it is a matter of a particularly powerful social fatality. In fact this mode of credit on a landed-property pledge is not only an economic and juridical category. It is also a sentimental motive power: the lessee's effort to consolidate his possession is opposed by the continuous attack of the lessor. Any means will do: feint, fraudulent denegation, falsehood, etc. All is fair in war. The two parties, as an amghar of the Seksawa told me, confront each other like cat and dog: one seeks to disguise the rrahn as a definitive sale, the other to do away with it without any outlay by title of pure and simple monopoly. More than gain, it is probably an advantageous position, fame in the bosom of the group, that one seeks. That against preoccupations of subjective sincerity, indeed old rules of obligation that the rrahn still expresses, /361/ this is undeniable. But what counts here is triumph in the joust. Something superior even to patrimonial legitimacy is affirmed in this tension that divides the group in conflicts of sometimes several generations. These mores give the skillful litigant and even the falsifier his chance. Must one accordingly attribute them to the decadence of the institutions? No, undoubtedly, but rather to a procedural primacy. And beneath this last is divined an old agonistic structure.

432 The Ruse-Sale

This is undoubtedly what explains the fact that, in spite of all the objections against landed-property alienation, it nevertheless exists. It is rare in Seksawa, and certain neighboring populations have purely and simply abolished it. Out of four "sales" one is affirmed as definitive: such is the ratio